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August 17, 1999

Magalie R. Salas, Secretary
Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: In the Matter of AVR, L.P. d/b/a Hyperion of Tennessee, L.P.
Petition for Preemption of Tennessee Code Annotated
Section 65-4.201(d) and Tennessee Regulatory Authority
Decision Denying Hyperion's Application Requesting Authority
to Provide Service in Tennessee Rural LEC Service Areas**

CC Docket No.: 98-92
Ex Parte Presentation

Dear Ms. Salas:

On behalf of the Tennessee Small Independent Telephone Companies ("TN ILECs"), attached hereto is the original signed Comments to supplement the record in the captioned proceeding. A facsimile signature of the Comments was filed with the Commission on August 12, 1999.

Please associate this document with TN ILEC's referenced filing.

Should you have any questions concerning this matter, please contact this office.

Respectfully submitted,


Margaret Nyland

MN/cvh

Attachments

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Loretto Telephone Company, Inc.

P.O. BOX 130 • 136 SO. MAIN STREET
LORETTO, TENNESSEE 38469

August 12, 1999

VIA HAND DELIVERY

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
445 Twelfth Street, S. W.
Room TW-A325
Washington, D.C. 20554

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In Re: In the Matter of AVR, L.P. d/b/a Hyperion of Tennessee, L.P. Petition for
Preemption of Tenn. Code Ann. Section 65-4-201(d) - CC Docket No. 98-92

Dear Secretary Salas:

On behalf of (10) Tennessee Independent Local Exchange Carriers which include Ardmore Telephone Company, Inc., CenturyTel, Inc., consisting of; (1) CenturyTel of Adamsville, Inc.; (2) CenturyTel of Claiborne, Inc.; and (3) CenturyTel of Ooltewah-Collegedale, Inc., Loretto Telephone Company, Inc., Millington Telephone Company, Inc., and the Telephone Electronics Corporation consisting of; (1) Crockett Telephone Company, Inc.; (2) Peoples Telephone Company; and (3) West Tennessee Telephone Company, Inc., and United Telephone Company (hereinafter referred to as the "TN ILECs"), enclosed for filing are an original and twelve (12) copies of the TN ILECs comments in the above referenced Docket.

Should you have any questions concerning this filing, please do not hesitate to contact me at (931) 853-5000 ext. 128.

Sincerely,



Desda Passarella Hutchins
Loretto Telephone Company, Inc.
On behalf of the TN ILECs

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| AVR, L.P. d/b/a |) | |
| Hyperion of Tennessee, L.P. |) | |
| Petition for Preemption of |) | |
| Tennessee Code Annotated |) | CC Docket No. 98-92 |
| § 65-4-201(d) and Tennessee |) | |
| Regulatory Authority Decision |) | |
| Denying Hyperion's Application |) | |
| Requesting Authority to |) | |
| Provide Service in Tennessee |) | |
| Rural LEC Service Areas |) | |

**COMMENTS OF THE TENNESSEE SMALL INDEPENDENT TELEPHONE
COMPANIES**

The Tennessee Small Independent Telephone Companies (hereinafter referred to as the "TN ILECs") (Ardmore Telephone Company, Inc., CenturyTel, Inc., consisting of; (1) CenturyTel of Adamsville, Inc.; (2) CenturyTel of Claiborne, Inc.; and (3) CenturyTel of Ooltewah-Collegedale, Inc., Loretto Telephone Company, Inc., Millington Telephone Company, Inc., and the Telephone Electronics Corporation consisting of; (1) Crockett Telephone Company, Inc.; (2) Peoples Telephone Company; and (3) West Tennessee Telephone Company, Inc., and United Telephone Company) are in full support of both the Tennessee Regulatory Authority ("TRA") and TDS Telecommunications Corporation (TDS) and their respective positions presented before the FCC in their "Petition(s) For Reconsideration" in the aforementioned proceeding. The Petitioners urge the Federal Communications Commission ("FCC") to reconsider and reverse its preemption decision with regards to Hyperion of Tennessee, L.P. and the Tennessee Regulatory Authority's Denial Order which denied Hyperion's Application requesting authority to provide services in areas served by small, rural Local Exchange Carriers ("LECs").

In the TRA's Docket No. 98-0001 dated April 9, 1998 (Denial Order) the TRA denied Hyperion's request to provide service in territory of the small rural LEC Tennessee Telephone based on Tennessee Code (Section 65-4-201(d)), a Tennessee statute intended to preserve and advance universal service in Tennessee. The TN ILECs agree with TDS that the FCC was too broad in its preemption of the TN Statute. The preemption revokes not only the TRA Order enforcing Section (65-4-201(d)) of the Tennessee Code, it also denies the authority of the

Tennessee legislature and the TRA to protect the rights of Tennessee consumers as envisioned by Section 253(b) of the Communications Act of 1996 (the "Act").

The TN ILECs agree that the FCC should reform its interpretation of Section 253 to restore the authority reserved for the states by Congress to protect consumers from unfair and unbalanced competition. The TRA correctly points out that Congress adopted the Act in its entirety including the consumer safeguards designed to preserve and advance universal service. In its Universal Order the FCC explicitly states that the principal purpose of Section 254 is to create mechanisms that will sustain universal service as competition emerges. The FCC ignored the TRA's and TDS's showing that the FCC has not finished its task under 254 of making federal universal services sustainable in a competitive marketplace.

The TN ILECs further supports the TDS position that the FCC failed to apply its stated policy of evenhanded implementation of "Competitive Neutrality". It certainly appears that Hyperion's intent (as is the case with most Competitive Local Exchange Carriers – "CLECs") is only to "cherry pick" rural LECs' high volume business customers. It is these same targeted customers that provide the implicit cash flows that allow rural LECs, such as TDS and other TN ILECs, to fulfill their obligation to provide universal service. Uneven regulation only raises the risk that TDS and other rural TN ILECs will be forced to increase rates in order to support the high cost customers in rural residential areas. These rural high cost, low volume residential customers should not be left to bear the financial burden of universal service for the sake of competition.

Conclusion:

The TN ILECs supports the petitions made by the TRA and TDS in this proceeding and requests that the FCC reverse its decision to preempt the TRA's Denial Order and Section (65-4-201(d) at least, and until the final resolution of universal service at both the Federal and State levels. Introduction of Competition should not be at the expense of universal service to Tennessee's rural customers.

Submitted by,



Desda Passarella Hutchins
Loretto Telephone Company, Inc.
On behalf of the TN ILECs